

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

SIMON MENGELE, §  
§  
Plaintiff, §  
§  
v. § No. 3:15-cv-3934-B-BN  
§  
AT&T SERVICES INC., §  
§  
Defendant. §

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

**TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:**

Pursuant to Federal Rules of Civil Procedure 56, Defendant, AT&T Services, Inc. (“AT&T”), files its Motion for Summary Judgment (the “Motion”) and requests the Court enter an order granting summary judgment dismissing with prejudice all claims brought by Plaintiff, Simon Mengele (“Mengele”), against AT&T. In support of its Motion, AT&T will establish that there is no genuine issue as to any material fact and AT&T is entitled to judgment as a matter of law.

**I. SUMMARY OF ARGUMENTS**

1. This is a classic case of an employee who was terminated due to his well documented and long standing poor performance and seeks to blame his employer. Mengele claims AT&T discriminated against him based upon his national origin in violation of Title VII on two grounds: (1) the company delayed his lateral move to a new position until he successfully completed a Coaching Action Plan (“CAP”) and Performance Improvement Plan (“PIP”); and (2) Mengele was terminated after he complained to management that his direct supervisor’s negative evaluations were based on her bias against Africans, not his actual work performance.

2. The evidence will establish Mengel failed to demonstrate traits that would indicate preparedness to rotate to the next position in the company's entry level program for recent engineering graduates. Specifically, Mengel failed to timely turn in work assignments, internal clients complained about his work product, and he was routinely late to team meetings and conference calls. Mengel bears the burden of proving the reasons presented are pretexts for racial/natural origin discrimination or retaliation. Mengel has no evidence that the issues noted by his supervisors were false or that the actions of which he complains of were motivated by his natural origin/race retaliation, or any other improper reason.

3. Further, Mengel has failed to provide evidence that the individuals responsible for making the decisions he contests were motivated by race or any other improper motive. Mengel further cannot adduce evidence that he would not have been retaliated against "but for" the reporting of his complaints against Jackson to upper management. In short, Mengel has failed to meet his burden of demonstrating pretext, that race/natural origin was a "motivating factor" in any decision regarding his employment, or that any action would not have been taken against him but for a retaliatory motive.

## **II. LEGAL AND FACTUAL GROUNDS**

In accordance with Local Rules 56.3 and 56.5, AT&T's Motion for Summary Judgment is supported by a Brief in Support of Its Motion for Summary Judgment and Appendix in Support of Its Motion for Summary Judgment, filed contemporaneously herewith. Each of the matters required by Local Rule 56.3(a) is addressed in the Brief and supported by the summary judgment evidence included in the Appendix.

## **III. CONCLUSION**

For reasons set forth more fully in its Brief, AT&T requests that the Court:

1. Grant summary judgment in favor of AT&T;

2. Dismiss Plaintiff's claims in their entirety;
3. Grant AT&T such other and further relief to which it may be entitled.

Respectfully submitted,

**ESTES THORNE & CARR PLLC**

/s/ Amy M. Stewart

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document on March 24<sup>th</sup>, 2017, with the Clerk of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system automatically generated a “Notice of Electronic Filing,” to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

Simon Mengele (via CMRRR and First Class Mail)  
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*/s/ Amy M. Stewart*  
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